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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/384,650	08/27/99	MICHAEL J	D-1079-DIV

EXAMINER	
BUTLER, M	
ART UNIT	**PAPER NUMBER**
3651	18

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DATE MAILED: 12/04/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/384,650	Michael et al.
Examiner	**Group Art Unit**
Michael E. Butler	3651

☒ Responsive to communication(s) filed on *Sep 7, 2000*

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) *40-67* is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *40-67* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 40-60, as in paper numbers 6 and 8, and new claims 63-67 are rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant has conjoined elements using 'or' creating vague and indefinite claims (claim 40L 6; claim 42 L 1; cl 52 L 13; cl 53 L 18). The applicant should restructure the elements using a Markush grouping if coverage encompassing alternative elements is sought in the claims, "at least one of" if broad coverage is sought, or conjoin the elements with "and" for narrow coverage. These claims have been otherwise examined on the merits presuming the use of a Boolean "OR".

(re:cl 67) the applicant has used the limitation: generally cylindrical liquid further creating vague and indefinite language as there is no clear delineation of when something becomes generally cylindrical liquid container.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 65-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams '294. Williams '294 discloses:

(re:cl 40 base) moving the dispenser module from a position within the enclosure to a position outside the enclosure, adding or removing at least one medical item from the holder while outside the enclosure , moving the dispenser from outside the enclosure to within the enclosure such that the holder is within the enclosure (c 9 L 9-57);

(re: cl 65) engaging the latching lever with the latching pin to hold the module in the first position (c 6 L 39-60);

(re: cl 66) dispensing a medical item from one of the modules (c 7 L 30-50).

6. Claims 40, 42, 43, 49, 60, 50, 51, and 61, as in paper numbers 6 and 8, along with new claims 63-66 are rejected under 35 U.S.C. 102(b) as being anticipated by Blechle. Blechle discloses:

(Re: cl 40, 52, 53) moving the dispenser module from a position within the enclosure to a position outside the enclosure (col. 3 L 52-col. 4 L 2);

adding or removing at least one medical item from the holder while outside the enclosure (col. 2 L 22-24 ; col. 3 L 52-col. 4 L 2);

moving the dispenser from outside the enclosure to within the enclosure such that the holder is within the enclosure (col. 3 L 52-col. 4 L 2);

(Re: cl 42) manually adding or removing at least one medical item from the holder (col. 3 L 52-col. 4 L 2);

(Re: cl 42) moving the dispenser out of the enclosure so as to make it manually accessible (col. 3 L 52-col. 4 L 2);

moving the dispenser module within the enclosure and adjacent to the path;

(RE: cl 50) providing the holder with a plurality of items arranged in a stack (col. 7 L 46-col. 8 L 13);

engaging a follower in engagement with the stack (col. 7 L 46-col. 8 L 13); (Re: cl 51) adding a plurality of medical items to the holder in side by side relation to a stack (col. 5 L 61-68);

(Re: cl 61) providing an enclosure with a delivery area accessible from outside the enclosure providing a first dispenser module within the enclosure, wherein dispenser module includes a plurality of medical items and is selectively operative to dispense first medical items therefrom, providing a second dispenser module in the enclosure in supporting connection with the enclosure through a second support, wherein second and first supports are interchangeably engageable to support the first or second dispenser modules, and second dispenser includes a plurality of second medical items selectively operative to dispense the second medical items therefrom, wherein second medical items are dispensed from the second dispenser in the enclosure (col. 2 L 13-31);

dispensing at least one of a first or second medical item to the delivery area (col. 7 L 46-col. 8 L 13);

(re:cl 63) reading indicia on the reference surface (c 8 L 45-60);

(re:cl 64) determining the number of medical items held in the drawer (c 8 L 45-60);

(re: cl 65) engaging the latching lever with the latching pin to hold the module in the first position (c 7 L 47-58);

(re: cl 66) dispensing a medical item from one of the modules (c L 61-69).

7. Claims 40, 42, 43, and 46-47, as in paper numbers 6 and 8, along with new claims 63 and 66 are rejected under 35 U.S.C. 102(e) as being anticipated by Higham et al. Higham et al '366 discloses:

(Re: cl 40, 52, 53) moving the dispenser module from a position within the enclosure to a position outside the enclosure (col. 18 L 43-44);

adding or removing at least one medical item from the holder while outside the enclosure (col. 18 L 45-47);

moving the dispenser from outside the enclosure to within the enclosure such that the holder is within the enclosure (col. 22 L 10-15);

(Re: cl 42) manually adding or removing at least one medical item from the holder (col. 18 L 43-45);

(Re: cl 43) moving the dispenser out of the enclosure so as to make it manually accessible (col. 18 L 43-44);

(Re: cl 46,57) reading indicia on a reference surface (col. 5 L 3-18);

(Re: cl 47,58) moving the cover to the up position prior to moving the cover to the down position (col. 23 L 30-56);

(re: cl 66) dispensing a medical item from one of the modules (c 18 L 1-15 with Fig.3 #52);

(re: cl 67) dispensing a medical item including a support card from one of the modules (c 4 L 53-58);

dispensing a second medical item from a generally cylindrical holding container from a holder (c 27 L1-20 with Fig. 22, #260).

The applicant points out an apparatus structural limitation unutilized by any method limitation in claims in attempting to distinguish the claimed invention from the prior art. A structural limitation within a method claim needs a functional relationship to the method limitations to be afforded patentable weight. "The dichotomy between process and product classes of invention has also been recognized and noted". Ex parte Lyell , 17 USPQ2d 1548,1552 (BdPatApp&Int, 1990) in the following discussion "A method or process... is an act or a series of acts and from the standpoint of patentability must distinguish over the prior art in terms of steps, whereas a claim drawn to apparatus must distinguish in terms of structure. The Patent Act of 1952 did not abolish the then existing different classes of invention. It reaffirmed the same by Section 101 of USC 35". Ex parte Lyell at 1552 citing Ex Parte Forsyth, 151 USPQ 55, 56 (Bd. of Appeals 1965); see also MPEP 2114 for the analogous rule on the unavailability of functional limitation solely as the distinction in apparatus claims from prior art.

8. Claims 40, 42, 43, and 46-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Kraft et al.. Kraft et al. discloses:

(Re: cl 40, 52, 53) moving the dispenser module from a position within the enclosure to a position outside the enclosure (col. 5 L15-20);

adding or removing at least one medical item from the holder while outside the enclosure (col.13 L45-56);

moving the dispenser from outside the enclosure to within the enclosure such that the holder is within the enclosure (col. 8 L 8-38);

(Re: cl 42) manually adding or removing at least one medical item from the holder (col. 4 L 35-50);

(Re: cl 43) moving the dispenser out of the enclosure so as to make it manually accessible (col. 13 L 38-57);

(Re: cl 46, 57, 63) reading indicia on a reference surface (col. 9 L 1-28; col. 7 L 59-65);

(Re: cl 47, 58) moving the cover to the up position prior to moving the cover to the down position (col. 12 L 58-col. 13 L3);

(re:cl 63) reading indicia on the reference surface (c 9 L 1-28;c7 L 53-65);

(re:cl 64) determining the number of medical items held in the drawer (c 5 L 38-65);

(re: cl 66) dispensing a medical item from one of the modules (c 4 L 37-c5 L 7);

(re: cl 67) dispensing a medical item including a support card from one of the modules (c 4 L 37-c5 L 7); dispensing a second medical item from a generally cylindrical liquid holding container (c2 L 45-50) from a holder (c10 L 25-40).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 63-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams '294 in view of Higham et al. '366. Williams '294 discloses the elements previously discussed and further discloses:

(re:cl 64 determining the number of medical items held in the drawer (c 9 L 15-26); (re: cl 67) dispensing a second medical item from a generally cylindrical liquid holding container from a holder (c 2 L 14-34). Williams '294 does not disclose: reading indicia on the reference surface; dispensing a medical item including a support card from one of the modules.

Higham et al. '366 discloses:

(re:cl 63 reading indicia on the reference surface (5 L 3-18);

dispensing a medical item including a support card from one of the modules (c 4 L 53-58).

It would have been obvious for Williams '294 to read indicia on a reference surface because reading indicia is a convenient way for a processor controlling a dispenser to recognize and record medication received as inventory as taught by Higham et al '366. It would have been obvious for Williams '294 to dispense a medical item including a support card from one of the modules because prepackaged medication often comes attached to support cards for flexibility in storage and display on pegs as taught by Higham et al. '366.

11. Claims 40-43, 46-47, 49, 52-54, 57-58, 60, and 62, as in paper numbers 6 and 8, along with new claims 63, and 66-67, are rejected under 35 U.S.C. 103(a) as being unpatentable over Higham et al. '366. Higham et al. '366 the elements previously disclosed and further discloses: (Re: cl 41, 52-53) opening the door prior to moving the holder outside the enclosure (col. 18 L 45-47);

(Re: cl 49, 60, 62) dispensing a first medical item including a supporting card from the module (col.18 L 1-15; Fig. 3, # 52); dispensing a second medical item including a cylindrical holding container from the dispenser module (Fig. 21 , #260).

Higham et al. '366 does not disclose: closing the door after moving the holder inside the enclosure; that the cylindrical holding container contains a liquid. Higham et al. '366 does disclose a closed door (col. 18 L 43-47; Fig. 1, # 16). It would have been obvious to close the door after moving the holder inside the enclosure because the door was closed before the procedure commenced, the door may only be closed after the holder is inside the closure. Therefore it would have been obvious to close the door after the holder is within the enclosure because closing the door limits access, protects the holder, and facilitates portability of the dispenser as taught by Higham et al. '366. The examiner takes official notice that the use of cylindrical holding containers is well known in the medical products art. It would have been obvious to use a cylindrical holding container in the dispensing of medical products because cylindrical holding containers are sturdy and permit easy access to the contents.

12. Claims 40-43, 44, 46-49, 52-60, 62, as in paper numbers 6 and 8, along with new claims 63-64, 66-67, are rejected under 35 U.S.C. 103(a) as being unpatentable over Higham et al. '366 in view of Kraft et al.. Higham et al. '366 discloses the elements previously discussed. Higham et al. '366 does not disclose: engaging a helix within the holder a rotating mechanism; engaging a holder guide wherein the first portion of the holder guide is extended in an inside are within the helix and a second portion outside the helix; placing a medical item in engagement with each of a pair of helixes; extending a limiting member within the inside of the helix, wherein the limiting member prevents medical items from passing through the inside of the helix; determining the number of medical items held in the drawer.

Kraft et al. discloses: (Re: cl 44,55) engaging a helix within the holder a rotating mechanism; engaging a holder guide wherein the first portion of the holder guide is extended in an inside are within the helix and a second portion outside the helix (col. 8 L 25-67);

(Re: cl 45,56) placing a medical item in engagement with each of a pair of helixes (col. 5 L 21-37; col. 7 L 26-38;col. 8 L 25-67); (Re: cl 48,59) extending a limiting member within the inside of the helix, wherein the limiting member prevents medical items from passing through the inside of the helix (col. 8 L 25-67);

(re:cl 64) determining the number of medical items held in the drawer (c 5 L 38-65).

It would have been obvious for Higham et al. '366 to engage such a helix because such action facilitates dispensing of bulk medications as taught by Kraft et al.. It would have been obvious for Higham et al. '366 to place a medical item in engagement with each of a pair of helixes because placing the medical item in engagement is a necessary precursor to the dispensing of bulk medical items as taught by Kraft et al.. It would have been obvious for Higham et al. '366 to extend a limiting member within the inside of the helix because such a limiting member prevents extraneous dispensing of medicine as taught by Kraft et al.. It would have been obvious for Higham et al. '366 to determine the number of medical items held in the drawer to maintain dosage and inventory data and disseminate reorder information as taught Kraft et al..

13. Claims 40-43, 44, 45-49, 52-60, 62, as in paper number 8, along with new claims 63-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraft et al.. in view of Pitel et al.. Kraft et al.. discloses the elements previously discussed and further discloses placing a dispensate medical item in engagement with each of a helix. Kraft et al. does not disclose

placing a dispensate item in contact with a pair of helixes. Pitel et al. discloses placing a dispensate item in contact with a pair of helixes (abstract). It would have been obvious for Kraft et al. to place the dispensate in contact with a second helix because duel helixes are more reliable and more flexible in the size and width of dispensed products than are single helix dispensers as taught by Pitel et al..

14. Claims 40, 52, 43, 45, 53 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitel et al.. Pitel et al. discloses:

(Re: cl 40, 52, 53) moving the dispenser module from a position within the enclosure to a position outside the enclosure (col. 7 L 27-415 L15-20);

adding or removing at least one item from the holder while outside the enclosure (col.7 L 27-41);

moving the dispenser from outside the enclosure to within the enclosure such that the holder is within the enclosure (col.7 L 27-41);

(Re: cl 42) manually adding or removing at least one item from the holder (col. 7 L 27-41);

(Re: cl 43) moving the dispenser out of the enclosure so as to make it manually accessible (col. 7 L 27-41); placing a dispensate item in contact with a pair of helixes (abstract).

Pitel et al. does not disclose the item removed and placed within the dispenser and in contact with the duel helixes is a medical item. The examiner takes official notice that the dispensing of medicaments such as aspirin and antacids is well known in the vending arts. It would have been obvious for Pitel et al. to place a medicament within the helical

dispensing tray because aspirin is a saleable and vendible product and its distribution is a service to consumers.

15. Claims 40, 42, 43, 44, 46, 48-50, 51, 55, 59-62, as in paper numbers 6 and 8, along with new claims 63-67, are rejected under 35 U.S.C. 103(a) as being unpatentable over Blechl et al. in view of Kraft et al.. Blechl discloses the elements previously discussed and further discloses: dispensing a second medical item from a generally cylindrical liquid holding container from a holder (c 6 L 61-69). Blechl does not disclose: engaging a helix within the holder a rotating mechanism; engaging a holder guide wherein the first portion of the holder guide is extended in an inside are within the helix and a second portion outside the helix; placing a medical item in engagement with each of a pair of helixes; extending a limiting member within the inside of the helix, wherein the limiting member prevents medical items from passing through the inside of the helix.

Kraft et al. discloses:

(Re: cl 44,55) engaging a helix within the holder a rotating mechanism; engaging a holder guide wherein the first portion of the holder guide is extended in an inside are within the helix and a second portion outside the helix (col. 8 L 25-67);

(Re: cl 45,56) placing a medical item in engagement with each of a pair of helixes (col. 5 L 21-37; col. 7 L 26-38; col. 8 L 25-67);

(Re: cl 48,59) extending a limiting member within the inside of the helix, wherein the limiting member prevents medical items from passing through the inside of the helix (col. 8 L 25-67); (re: cl 67) dispensing a medical item including a support card from one of the modules (c 4 L 37-c5 L 7).

It would have been obvious for Blechle to engage such a helix because such action facilitates dispensing of bulk medications as taught by Kraft et al.. It would have been obvious for Blechle to place a medical item in engagement with each of a pair of helixes because placing the medical item in engagement is a necessary precursor to the dispensing of bulk medical items as taught by Kraft et al.. It would have been obvious for Blechle to extend a limiting member within the inside of the helix because such a limiting member prevents extraneous dispensing of medicine as taught by Kraft et al.. It would have been obvious for Blechle to dispense a medical item including a support card from one of the modules because prepackaged medication can be easily stored on pegs with support cards as taught by Kraft et al..

16. Claims 40-43, 46-47, 49, 50-54, 57-62, as in paper numbers 6 and 8, along with new claims 63-67, are rejected under 35 U.S.C. 103(a) as being unpatentable over Higham et al. '366 in view of Blechl et al. Higham et al. '366 the elements previously disclosed and further discloses:

(Re: cl 41, 52-53) opening the door prior to moving the holder outside the enclosure (col. 18 L 45-47);

(Re: cl 49, 60, 62) dispensing a first medical item including a supporting card from the module (col.18 L 1-15; Fig. 3, # 52);

dispensing a second medical item including a cylindrical holding container from the dispenser module (Fig. 21 , #260). Higham et al. '366 does not disclose: closing the door after moving the holder inside the enclosure; that the cylindrical holding container contains a liquid ; providing the holder with a plurality of items arranged in a stack ; engaging a follower in engagement with the stack adding a plurality of medical items to the holder in side by side relation to a stack. Higham et al. '366 discloses: a closed door (col. 18 L 43-47; Fig. 1, # 16). It would have been obvious to close the door after moving the holder inside the enclosure because the door was closed before the procedure commenced, the door may only be closed after the holder is inside the closure. Therefore it would have been obvious to close the door after the holder is within the enclosure because closing the door limits access, protects the holder, and facilitates portability of the dispenser as taught by Higham et al. '366. Blechl et al.discloses

the use of cylindrical holding containers for liquids (col. 8 L 18-36); providing the holder with a plurality of items arranged in a stack (col. 7 L 46-col. 8 L 13);

engaging a follower in engagement with the stack (col. 7 L 46-col. 8 L 13); (Re: cl 51) adding a plurality of medical items to the holder in side by side relation to a stack (col. 5 L 61-68).

It would have been obvious to use a cylindrical holding container in the dispensing of medical products because cylindrical holding containers are sturdy and permit easy access to the contents as taught by Blechl et al.. It would have been obvious to a holder with a plurality of items arranged in a stack because such a dispensing arrangement facilitates repetitive dispensing of common sized items as taught by Blechl et al.. It would have been obvious to engage a follower with the stack because such an engagement permits medication to be dispensed in a two phase approach facilitating dispensing in a secure way. It would have been obvious to place a

plurality of medical items in side by side relation to the stack because such an arrangement facilitates the storing and dispensing of medications of varying sizes as taught by Blechl et al.. It would have been obvious for Higham et al. '366 to engage a latching lever with a latching pin because a latching pin and lever system are easy to control and manipulate via processor controlled solenoids and well protected from outside manipulation by a housing as taught by Blechl et al..

17. Claims 63 and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higham et al. '366 in view of Gardner et al. '294. Higham et al. '366 discloses the elements previously disclosed and further discloses: engaging the latch to hold the module in the first position (c28 L 11-41). Higham et al. '366 does not disclose: engaging the latching lever with the latching pin. Gardner et al. '294 discloses: (re: cl 65) engaging the latching lever with the latching pin to hold the module in the first position (c7 L 15-53). It would have been obvious for Higham et al. '366 to engage a latching lever with a latching pin because a latching pin and lever system are easy to control and manipulate via processor controlled solenoids and well protected from outside manipulation by a housing as taught by Gardner et al. '294.

18. Claim 63-64 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higham et al. '366 in view of Halverson. Higham et al ' 366 discloses the elements previously disclosed but does not disclose:

determining the number of medical items held in the drawer. Halverson discloses: determining the number of medical items held in the drawer (c 5 L 35-65; c 3 L 15-27). It would have been obvious for Higham et al. '366 to determine the number of medical items held in the drawer because determining quantities of inventory in the drawer prevents over-prescribing and may be used to trigger restocking orders as taught by Higham et al. '366.

Response to Arguments

19. The examiner acknowledges alternative language proposed by the applicant would serve as an acceptable solution to defining the limitations of the claim scope sought by the applicant thereby overcoming the rejections under 35 U.S.C. 112 2d if incorporated within the claims.

The examiner has considered the applicant's responses but finds them unpersuasive in defining over the prior art.

The examiner maintains the rejection because the dispensing of medications including aspirin and antacids in vending machines are well known. In rebuttal to the applicant's challenge that the dispensing of medications are not well known, the examiner offers in rebuttal: Pearson (Robert L.), *Cutting Costs Through Consolidation* (p4 ¶ 9); Gannon (p2 ¶ 2 & 6); Monroe (p 1 boottom); Dana (c 7 L 20-40); Williams, Joy.

In response to applicant's assertion that the rejection is not in compliance with MPEP 707.07(d) because it identifies the text passages without supplementation with drawing numbers, the examiner directs the applicant's attention to MPEP 706.02(j) (A) which states:

> "the examiner should set forth in the Office action:
>
> the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate."

The MPEP identifies the preferred element identification and supplementing the identification constitutes an unnecessary and superfluous consumption of time. Further, as the drawing symbols in a prior art document are directed at understanding or advocating the objectives sought to be advanced by the reference document, elements disclosed in the prior art corresponding with the claim elements in an subsequently filed application are not always identified by drawing

symbol in the prior art. This is particularly so with respect to the verb oriented elements of a method claim. The elements the applicant requests are apparatus elements representative of the apparatus claim elements present in apparatus claims such as those applicant elected to prosecute in the parent application of this divisional application. The apparatus elements requested by the applicant regarding reference Higham et al. '366 can be found, among other locations: Dispenser "dispensing unit 10" (c13 L 43); Holder: "plurality [of] receptacles for holding items" (c7 L 52-53); Dispenser module "receptacles 250 are slidably held behind a cover which is removable from the drawer" (c 26 L 42-43); Dispenser mechanism (Fig. 32-36, the elements enclosed within drawer 294, particularly as described at c 28 L 42-63);Medical item "pharmaceutical items"(c 26 L 17). The apparatus elements requested by the applicant regarding reference Blechl et al. can be found, among other locations: Dispenser (10); holder: (90); Dispenser module (60); Dispenser mechanism (68,70,72,74,82); Medical item (108).

Due to the applicant selecting differing claim elements for differing claims, those claims rejected under 35 U.S.C. 103 having common elements disclosed in common references used in making an earlier recited rejection of claims under 35 U.S.C. 102, were identified in the body of the 102 rejection rather than repeat the elements in the body of the 103 rejection in the interest of brevity.

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (703) 308-8344.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis, can be reached on (703) 308-2560. The fax number for the Group is (703) 305-7687.

Michael E. Butler

Michael E. Butler
Examiner

11/12/00

CHRISTOPHER P. ELLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600